

REMARKS

1. Applicant thanks the Office for its remarks and observations, which have greatly assisted Applicant in responding.

2. **35 U.S.C. § 101**

Claims 1-15 are rejected as being directed to non-statutory subject matter because they are alleged to constitute functional descriptive material. Applicant respectfully disagrees. The original claims give the Office no reasonable basis to allege that the components described in claims 1-15 are no more than functional descriptive material. Nevertheless, Claims 1-15 are amended to describe each of the previously-described components as a processor programmed to perform the function of the previously-described component. Support for the amendment is found at least in Figs. 1A and 16 of the U.S. patent application publication no. 2005/0108293 and in the specification, at least at ¶¶ 0024-0027 and 0119-0125. It is well settled that a computing device, such as a processor, programmed to perform a function constitutes statutory subject matter. Accordingly, the present object is deemed overcome.

3. **APPLICANT COMMENTS ON THE "RESPONSE TO ARGUMENTS."**

Applicant strenuously objects to the gratuitous statements contained in the "Response", arguing in support of the propriety of a previous rejection, now withdrawn. Had the previous rejection not been defective, there would have been no reason to withdraw it. Withdrawal of the previous rejection and issue of a new ground of rejection is *prima facie* an admission by the Office that the previous rejection was defective.

4. **AMENDMENTS TO THE SPECIFICATION**

The specification is amended to insert a priority claim to U.S. patent application ser. no. 10/232,572, filed August 30, 2002 and which claims benefit of U.S. provisional patent application ser. no. 60/316,782, filed August 31, 2001. Applicant submits herewith a Petition under 37 CFR § 78(a)(3), requesting that the Office accept a delayed claim for benefit of the filing date of the prior-filed co-pending application.

5. **35 U.S.C. § 103**

Claims 1-2 and 16-18 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. publication no. 2003/0163490 ("Kitamura") in view of U.S. patent no. 6,775,537 ("Panichkul"). Applicant respectfully disagrees. Kitamura's earliest priority date is February 25, 2002. As above, the Application has been amended to claim priority from U.S. patent application ser. no 10/232,572, having a priority date of August 31, 2001. Accordingly, the priority date for the subject Application is also August 31, 2001, well before Kitamura's earliest date. Kitamura thus is not prior art to the subject application. Therefore, all prior art rejections based on Kitamura are deemed improper.

Claim 3 is rejected as being unpatentable over Kitamura in view of Panichkul and further in view of Shutt. In view of the above, the present rejection is deemed to be improper. Additionally, Shutt's earliest priority date is May 14, 2002, well after the subject Application's priority of August 31, 2001. Therefore, neither of Kitamura and Shutt is prior art to the subject Application.

Claims 1-3 and 5 are rejected as being unpatentable over Shutt in view of Panichkul. As above, Shutt is not prior art to the subject Application. All prior art rejections based on Shutt are therefore improper.

Claims 1-3 and 5 are rejected as being unpatentable over Shutt in view of U.S. patent application publication no. 2005/0055341 ("Haahr"). Applicant respectfully disagrees. Haahr's earliest priority date is September 22, 2003. Neither Shutt nor Haahr are prior art to the subject Application. The present rejection is therefore deemed improper. Additionally, all rejections based on the combination of Shutt and Haahr are improper.

6. Applicant hereby incorporates its previous remarks regarding the cited references as if fully set forth herein. Even if the priority of the subject Application had not been corrected, the foregoing rejections would be improper for reasons that Application has already discussed in detail in previous responses.

7. For the record, Applicant respectfully traverses any and all factual assertions in the file that are not supported by documentary evidence. Such include assertions based on findings of inherency, assertions based on official notice, and any other assertions of what is well known or commonly known in the prior art.

CONCLUSION

Based on the foregoing, the Application is deemed to be in allowable condition. As such, Applicant earnestly requests reconsideration and prompt allowance of the claims. Should the Examiner deem it helpful, the Examiner is invited to contact Applicant's attorney at 650-474-8400.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeffrey Brill', with a long horizontal flourish extending to the right.

Jeffrey Brill

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